

# THE DAYTONA GAZETTE-NEWS.

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Edw. Fitzgerald, Publisher

## Ladies, Your Attention

Is called to some new models of Thompson's glove fitting corsets. Thompson's corsets have made the American figure famous.

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### City Attorney's Argument

#### Before the Circuit Court

IN THE CASE OF WM. M. McGRILL PLAINTIFF IN ERROR  
VS. CITY OF DAYTONA DEFENDANT IN ERROR.

The questions presented in this case, are not so far as this tribunal is concerned questions of metaphysics or of moral science but of enacted law.

American jurisprudence reposes upon the proposition, that it is enacted. What then is the enacted law of Florida governing an appeal from a Mayor's Court?

Art. V, Sec. 11 of the Constitution of Florida, provides as follows: "They (the Circuit Courts) shall have final appellate jurisdiction of judgments or sentences from any Mayor's Court."

The Constitution does not enforce itself of its own motion, in cases of appeals from Mayor's Courts except to the extent of prescribing what court shall have final appellate jurisdiction.

The how and when such appeal shall be taken is left by the Constitution for Legislature to enact.

The Legislature, by its first enactment, prescribed that the practice in Mayor's Courts, should be similar to the then practice of the Justice of the Peace Courts, where the pleadings were oral, bills of exception and new trials unknown, and appeals a mere trial de novo in the Court of Appeal.

Revised Statutes, section 2796, re-enacts the words of the constitution, without prescribing the how or the when.

Sec. 1631 provides, "Writ of Error from Justice of the Peace Courts shall be governed in all respects by the provision relating to writs of error in Chapter xxv, Title I, 2nd Division of this revision. Bills of exception may be taken in accordance with the practice in the Circuit Courts and with like effect." ("N. B. Practice on trial below and on appeal above is changed in Justice of the Peace Courts, but the provision does not include Mayor's Courts in its application nor does any other provision of the Revised Statutes.")

Sec. 1262 provides, "That review by appellate Courts shall be by Writ of Error, except where certiorari or prohibition lie, or where it shall be otherwise expressly provided."

Sec. 1263 provides, "That the Judge of any court of this State, upon trial at law shall sign a bill of exception etc."

Does this provision apply to the practice of mayor's courts, or exclusively to those courts which are explicitly enumerated in the Revision as having their practice changed?

Certiorari and prohibition lie to test validity of an ordinance. The mayor's court is one of summary jurisdiction without legal forms further than is absolutely necessary to the exercise of such summary jurisdiction. Was it intended to place the enforcement of petty ordinances on a par with a regular administration of justice by the State as enacted by the legislature? If so, mayor's court would have been mentioned with justice of the peace courts in Sec. 1631. All inferior courts except mayor's courts are systematically specifically, and thoroughly provided for in the matter of appeal. The leaving mayor's court out of the specific provision enumerating what courts should be governed by the new practice, would indicate that Sec. 1263 had reference only to the courts enumerated in the specific provision.

Either appeal from mayor's courts constitute a casus omnisus or the commissioners of Revision deliberately intended status quo to remain, as to the summary practice in, and the trial de novo on appeals from, mayor's courts with certiorari and prohibition as the modes of review.

Under the old practice of trial de novo on appeals from mayor's courts, the appeal was not perfect until payment was made of the costs and the fine imposed. The record does not show that the costs and the fine imposed have been paid and the appeal is out of court if the Court in its discretion does not allow the appellant to pay costs and fine nunc pro tunc. It is against the policy of the law to allow appellant to speculate in litigation without first paying costs and fines.

If the appeal is de novo in this court, or if an appeal from a mayor's court is a casus omnisus on the part of the state commissioners of revision, or if they provided that certiorari or prohibition were sufficient remedy in the premises, then there is no bill of exception in this case or in this court. The one legal point in this case, namely, whether the ordinance of the City of Daytona exacting license from a non-resident doing business in the city is an absolute nullity; could be raised by certiorari or by prohibition, and needed no appeal where it must be disposed of under the constitution and laws of the State by trial de novo.

The case of Wm. M. McGrill, plaintiff in error vs. City of Daytona defendant in error, is noted on the docket of the Circuit Court, but if there without statutory authority, the court has no alternative except to dismiss it. The presence of parties here and consenting, can confer no jurisdiction when the constitution and the laws confer none.

As to the merits. In the code of morals of democracy, as formulated in modern times, the rights of man are written with a secular quill of expediency which involves no social obligation to respect them on the part of mankind. Self-gratification (not self-restraint, from wrong, and not self-government for the highest good of society, based on the solidarity of common interest and mutual obligation of liberty, truth and justice among men) is the ultimate reliance of law and order. If human consent is the ultimate test of the validity of law, the plaintiff in error, it is presumed, withdraws his consent and ousts the jurisdiction of this court and the society over him.

The policy of Daytona in enacting the ordinance attacked for unreasonableness and unrightfulness and asked to be declared null and void by this court because repugnant to natural justice, is the only policy which has always controlled legislation from its distant cradle in the past up to today. Unconscious nature is a blind bat that never knew right from wrong, best represented by the claws of a tiger and the scythe of death.

When and where was a member of a family, of a tribe, or of a nation not treated better than an outsider to such family, tribe, or nation, in the absence of treaties or constitutional provisions to the contrary? Let the plaintiff in error indicate the treaty or constitutional provision which has modified the common law of the world, or taking the other horn of the dilemma show that a change of the constitution has changed the axels of society from empirical to resolute science. If outsiders venture into the family, the tribe or the nation, they are tolerated by comity and their privileges are what the family, the tribe or the nation extend to them. Expediency is a poor chart and compass of human experiment. Outsiders can claim nothing by strict right. The rights of man in the gospel of expediency, is the equal right of every man to make a tyrant of himself and tyrannize over others and ever popular government on its present axis is the legalized "tyranny of numbers."

Neither international nor municipal laws are founded on any other basis than that each family, tribe and nation has an inherent and natural right to make laws exclusively for their own interest and benefit. Vide code duello of nations, vide the laws of Florida governing foreign insurance companies and foreign companies generally and tourists. This looking out for No. 1 as law and gospel is the established principle of revenue and taxation and legislation in Florida and the world over. Where the consensus of science and religion tenders to mankind the unknowability of man's relation to the universe as the only basis of social order expediency and the animal self stripped of conscience fill the gap and make up the marrow of human legislation. Go as you please and do as you please except as the supreme power in the State has prescribed a rule of civil conduct that you disregard at your peril.

The underlying principle of all law as formulated by treaty or enacted at home for their own citizens is the negation that there is any knowable moral law or natural justice except that of cosmic despotism to be the common umpire among men. Wherever this moral law and natural justice of cosmic despotism has been injected into jurisprudence the thumbscrew and the fagot and the ordeal and the king as an improvement upon the pis aller of a spiritual despot, has been the skull and bones symbol on earth of a monopolist and autocratic Providence who issues His dictatorial orders to favorites defying proof, commanding slaves to accept and obey an effete tradition without a particle of responsibility for the knowledge of truth or the practice of justice. The universal necessity of evolution science converts all men into automatons and the universal despotism of special revelation converts all men into slaves. With church and state divided, and the universe branded as unknowable by both empirical science and empirical religion, expediency is the only legal bond of society, and the interest of the individual and of locality is the only object and the very marrow of legislation.

(Continued on 2nd page.)

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